IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12548 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHIEF OFFICER

Versus

KALUBHAI DAMJIBHAI BERDIA C/O.VASANT PAMNANI

Appearance:

1. Special Civil Application No. 12548 of 2004
MS. SANGEETA PAHWA for M/S THAKKAR ASSOC.
for Petitioner No. 1
MR DA SURANI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 24/01/2005

ORAL JUDGEMENT

#. In response to the Rule issued by this Court on 28th September, 2004 and notice as to interim relief, Mr.

D.A.Surani, the learned advocate appears for the respondent-workman.

#. Heard the learned advocates for the parties. At the request of the learned advocates, the matter is taken up for final disposal today.

#. It is stated by Mrs. Sangeeta Pahwa, the learned advocate for the petitioner- Chief Officer of Mahuva Nagarpalika, that the respondent-workman is in employment as on date, in fact, he is in continuous service since 27.3.2001. Hence, the direction to `reinstate' does not survive. The only question is of backwages which the learned Member of the Industrial Tribunal has awarded. The learned advocate invited attention of the Court to the contents of Annexure:B and letter dated 21.12.92 and also to the deposition of the respondent-workman, wherein while being cross-examined, he has stated that he did not report for duty from 1992 to 2000.

#. Mr. Surani, the learned advocate for the respondent-workman placed reliance on exh. 31, the letter written by the co-worker of the respondent-workman, stating that the respondent-workman had reported for duty to the Chief Officer of the petitioner Nagarpalika, but the Chief Officer had not allowed him to resume. The said submission of the learned advocate does not inspire any confidence for the reason that if that was so, the respondent-workman must have contacted the union leader, who was assisting the workman who in turn, must have written a registered A.D. letter. Raising such an important contention by writing `a simple letter' that too by a union leader cannot be accepted. The learned advocate for the petitioner has stated that the respondent-workman was reinstated even before the award was passed.

#. Having heard the learned advocate for the parties and having given considered thought to the matter, it is deemed fit that to best serve the ends of justice, order under challenge be modified qua the backwages. Award of backwages in full is quashed and set aside. This petition is partly allowed. The judgment and award dated 29th April, 2004 in complaint (IT) No. 57/93 is modified to the aforesaid extent only. The petition is accordingly disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

[RAVI R. TRIPATHI, J.]
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